

VERNER SIMON

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July 13, 2022

VIA ECF

Hon. Mary Kay Vyskocil
USDC, SDNY
500 Pearl Street, 18C
New York, NY 10007-1312

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7/18/2022
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Re: *Grimes v. Sony et al.*
Case No.: 19-cv-10644 (MKV)(RWL)

Dear Judge Vyskocil:

In accordance with your Order of Dismissal (ECF#110) entered June 21, 2022, as counsel for the Plaintiffs, I request extension of time to reinstate the matter until August 22, 2022 or for such reasonable time as the Court determines is required for the parties to fully document their settlement. I have conferred with Defendants' and Intervenor Plaintiff's counsel and they join in that request.

I advise the court that having received a settlement agreement draft from Sony only on July 1, 2022,¹ the Plaintiffs and Intervenor Plaintiff have redlined the proposed agreement and have turned it back to Sony for its further edits.

It is respectfully submitted that it is squarely Sony that controls the timing of the closing of this settlement and, based upon our collective past experience, an additional thirty (30) days appears to be required. Because your June 21 Order disposed of the matter unless reinstated, it is respectfully suggested that time to reinstate be extended accordingly.

Plaintiffs and the Intervenor Plaintiff also request that the Court modify its June 21st directive as to Defendants Profile, Protoons, and Plotnicki. Fed. R. Civ. P. 4(m) provides guidance for how a district court may handle a plaintiff's failure to make proper service of process. Ordinarily, if a defendant is not served within 90 days after filing, the court must dismiss the action without prejudice against that defendant. Harmon v Bogart, 788 F App'x 808, 808 (2d Cir 2019). In fact, there was a failure of service as against these Defendants. Statutes of limitation do not preclude the claims contemplated by the Plaintiffs.

¹ Contrary to Sony's counsel's last correspondence (ECF#109) it was Sony which required that it create the first draft agreement and the press release which Sony also mandated. On July 1 the draft was received from Sony however with Sony still reserving rights although we have not yet received the required draft press release.

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In fact, once the Sony settlement is completed, the New York state Supreme Court will be the best forum for resolving those claims. Accordingly, we ask that the Court also modify its prior order and convert the dismissal of Profile, Protoons, and Plotnicki to without prejudice.

Thank you for your time and attention to this matter.


Very truly yours,
VERNER SIMON



PAUL VERNER

The deadline to move to restore is August 22, 2022. The dismissal of Defendants Profile, Protoons, and Plotnicki is without prejudice.

Date: July 18, 2022
New York, New York


Mary Kay Vyskocil
United States District Judge